

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of:)

Amendment of Section 73.202(b),)
 Table of Allotments,)
 FM Broadcast Stations,)
 (Fremont and Holton, Michigan))

MM Docket No. _____
 RM - _____

RECEIVED

APR 21 1998

To: Chief, Allocations Branch
 Policy & Rules Division, Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

PETITION FOR RULE MAKING

Noordyk Broadcasting, Inc. ("Noordyk"), by Counsel, and pursuant to §§ 1.401 and 1,420 of the Commission's Rules, hereby respectfully petitions the Commission to institute Rule Making proceedings for amendment of the FM Table of Allocations, as follows:

<u>City / State</u>	<u>Existing</u>	<u>Proposed</u>
Fremont, Michigan	261A	---
Holton, Michigan	---	261A

In support hereof, the following is shown:

Background

1. Noordyk is the Licensee of Radio Stations WSHN-AM and WSHN-FM at Fremont, Michigan. Noordyk proposes the reallocation of Channel 261A from Fremont to Holton, Michigan, and the modification of the WSHN-FM license to specify Holton as its community of license so that WSHN-FM can better serve the public through the most efficient use of its frequency. The reallocation of Channel 261A to Holton, Michigan would provide that

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community with its first local aural service. Noordyk would continue to provide local aural service to Fremont, Michigan through Radio Station WSHN-AM.

2. Re-submission of this Petition: Noordyk originally submitted a Petition for Rule Making on February 17, 1998 regarding these same matters. By letter dated April 8, 1998, the Commission returned the petition due to an alleged failure to comply with §73.207 of the Commission's Rules, and for an alleged failure to demonstrate the public interest benefits of the proposal. See, Attachment No. 1. In response, Noordyk is submitting additional information (including relevant Commission precedent) to support these efforts. With the submission of this additional information, Noordyk believes that the Commission should find merit in Noordyk's proposal.

Technical Criteria

3. An allocation study conducted by Noordyk's consulting engineer shows that Channel 261A may be reallocated to Holton, Michigan in compliance with §73.213(c) and §73.207 spacing requirements to all other applicable facilities, at the present WSHN-FM transmitting site.¹ See, Attachment No. 2 (*Technical Statement of Jefferson G. Brock of Graham Brock, Inc.*)

4. In order to operate with maximum Class A three-kilowatt facilities, Noordyk will be submitting a minor modification application to increase the height of the WSHN-FM antenna's center of radiation. Such an application will be necessary to place the requisite city-grade contour over the new community of license -- Holton, Michigan. As such, there will be a modest increase in

¹ Should the Commission grant this request, Noordyk would ultimately apply for a modification of the WSHN-FM facilities to maximize its facilities.

areas and population served by WSHN-FM. When such an application is submitted, Noordyk will be maintaining the current grand-fathered short-spacing protections to Radio Stations WBCH-FM at Hastings, Michigan, and WZTU-FM at Bear Lake, Michigan.

5. When the Commission denied Noordyk's original rule making petition, an alleged failure by Noordyk's proposal to provide full spacing to WBCH-FM and WZTU-FM was cited. However, in the past, when a station sought an upgrade at its current transmitter site (which, at that time, was operating with grand-fathered short-spacing to certain stations), the Commission gave its approval so long as the proponent maintained the same degree of grand-fathered short-spacing to those certain adjacent-frequency stations. *See, 7 FCC Rcd. 7657: MM Docket No. 90-164 (St. Augustine, St. Augustine Beach, and Gainesville, Florida), "Memorandum Opinion and Order," DA 92-1493, released November 24, 1992.* In MM Docket No. 90-164, Radio Station WYKS-FM was permitted to effectuate a same-class upgrade by changing channels from 287A to 288A while not changing transmitter sites, so long as it maintained the same spacing protections to its then-current grand-fathered short-spaced adjacent stations. What Noordyk seeks is no different./²

² In the April 8, 1998 denial letter, the Commission questioned how the public interest could be served by Noordyk's proposal without a change in transmitting site, or without an upgrade. As the technical data herein demonstrates, grant of this proposal will permit WSHN-FM to slightly increase the height of its antenna, thereby providing a modest increase in areas and populations served. Noordyk essentially proposes a same-class upgrade to permit maximum Class A three-kilowatt facilities. Such an increase in service, without causing any loss of service, is clearly in the public interest.

Community Qualifications of Holton, Michigan

6. Holton, Michigan is qualified and deserving to receive the reallocation of Channel 261A since it has definable boundaries/³, has its own elected government (a five-member Township Board, elected every four years), its own volunteer fire department, its own school system for grades kindergarten through 12th grade, and its own postal zip code -- 49425. Holton is home to numerous businesses and houses of worship that use the Holton name, such as:

Holton American Legion Post (9150 Holton Road)
Holton Foods (8764 Main Street)
Holton Garage Door (8201 Holton Road)
Holton Party Store (8794 Main Street)
Holton True Value Hardware (8505 Holton Road)
Holton Stop-N-Shop (8545 Holton Road)
Holton Free Methodist Church (8833 Holton Road)
Holton Lutheran Church (6655 Martin Road)
Holton United Methodist Church (6511 Holton/Whitehall Road)
Holton United Methodist Parsonage (8670 Ward Avenue)

Noordyk submits that when all of the above factors are considered -- namely, definable township boundaries, the Holton Zip Code, the use of the Holton name in businesses and several churches, and the establishment of a local government, school system and fire department -- the Commission should agree that Holton has a geographically identifiable population grouping and that objective indicia of community status are present. *See, FM Channel Assignments: Middletown, California, 69 RR 2d 1626 (MMB 1991).*

³ The Holton Township Official Zoning Map has been utilized by Noordyk's technical consulting engineer, and is attached to the engineering statement supporting this petition.

Public Interest Showing

7. Acceptance of this Petition and the modification of the WSHN-FM license to specify Holton as its community of license is in the public interest. Presently, Noordyk does not operate WSHN-FM at maximum 3 kilowatt facilities. In order to provide the requisite service to Holton, Noordyk will have to increase operating power for WSHN-FM to maximum 3 kilowatt facilities. Thus, the reallocation of Channel 261A to Holton, Michigan will permit WSHN-FM to increase its areas and population of service from 40,218 persons within 1,590.7 square kilometers to 43,146 persons within 1,828.7 square kilometers at its present site. Furthermore, this proposal provides first local aural service to the community of Holton, without depriving Fremont of any local aural service since Noordyk would continue to operate WSHN-AM at Fremont.⁴ Based upon the foregoing, Noordyk submits that this proposal results in a preferential arrangement of allotments, a new service benefit to the communities involved, and qualifies for consideration without affording other interested parties an opportunity to file competing expressions of interest. See, *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

Statement of Continuing Interest

8. Noordyk hereby states that, should the Commission institute the requested Rule Making proceedings and ultimately adopt the amendment to the

⁴ And, since Noordyk would continue to provide 1 mV/m service of WSHN-FM to the community of Fremont, the reallocation of Channel 261A to Holton would not have any real effect on the number of aural reception services provided to Fremont.

FM Table of Allotments proposed herein, it would file an application for modification of the WSHN-FM license to increase the height of the WSHN-FM antenna's center of radiation while specifying Holton as its community of license.

Conclusion

WHEREFORE, the above premises considered, Noordyk respectfully urges that the Commission commence Rule Making Proceedings proposing to amend § 73.202(b) of the Commission's Rules, FM Table of Allotments, as follows:

<u>City / State</u>	<u>Existing</u>	<u>Proposed</u>
Fremont, Michigan	261A	---
Holton, Michigan	---	261A

Respectfully submitted,

NOORDYK BROADCASTING, INC.

By: 
Cary S. Tepper

Its Attorney

Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, D.C. 20016-4120

(202) 686-9600

April 21, 1998

Attachment No. 1

(FCC Letter dated April 8, 1998)



Federal Communications Commission
Washington, D.C. 20554

APR 08 1998

Carry S. Tepper
Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Avenue, N.W., Suite 307
Washington, D. C. 20016-4120

Dear Mr. Tepper:

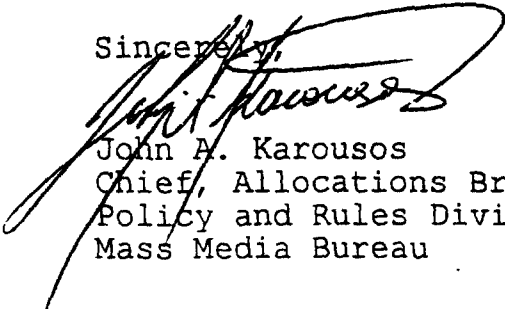
This is in response to the proposal you filed on February 17, 1998, on behalf of Noordyk Broadcasting, Inc., requesting the reallocation of Channel 261A from Fremont, Michigan, to Holton, Michigan, and modification of the license for Station WSHN-FM to specify Holton as the community of license.

Although you are not relocating the transmitter, changing the channel or upgrading the class, your proposal for a change of community constitutes a new rule making proceeding. Petitions to amend the FM Table of Allotments must meet the requirements of Section 73.207 of the Commission's Rules. Therefore, we have analyzed your petition pursuant to the spacing requirements which took effect on October 2, 1989. See MM Docket No. 88-375, 4 FCC Rcd 6375 (1989). Using the reference coordinates, as you have specified, for Station WSHN-FM (43-28-15 and 85-56-25), your proposal for Holton, Michigan, is short spaced to Stations WBCH, Channel 261A, Hastings, Michigan, and WZTU, Channel 261A, Bear Lake, Michigan.

You state that your proposal can be processed under Section 73.213(c) of the Rules with respect to Station WBCH, Hastings, and WZTU, Bear Lake, and that to all other facilities WSHN-FM complies with the current spacing requirements of Section 73.207. Although your current facilities may be protected under Section 73.213, the new proposal you have submitted requesting changes must comply with Section 73.207 of the Rules. You did not make a showing to justify a waiver of the spacing requirements nor have you provided any information showing public interest benefits. We do note that you state that the change of community will allow Station WSHN-FM to increase its area of population and service but it is not clear how this will be accomplished since you are not relocating your transmitter site or upgrading your class of channel.

Based on the above discussion, we are returning your petition for Fremont and Holton, Michigan.

Sincerely,


John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment No. 2

(Technical Statement of Jefferson G. Brock)

PETITION FOR RULE MAKING
NOORDYK BROADCASTING, INC.
RE-ALLOT CHANNEL 261A
HOLTON, MICHIGAN
April 1998

TECHNICAL STATEMENT

1. This Technical Statement and attached exhibits were prepared on behalf of Noordyk Broadcasting, Inc. ("Noordyk"), licensee of WSHN-FM, Channel 261A, Fremont, Michigan. Noordyk herein requests the re-allotment of Channel 261A from Fremont, Michigan, to Holton, Michigan. The re-allotment will provide Holton with its first locally listenable FM facility and will not deprive Fremont of its only local service. The proposed allocation of Channel 261A to Holton is mutually exclusive with the present allocation of Channel 261A at Fremont.

2. Noordyk originally submitted a Petition for Rule Making on February 17, 1998, requesting these same changes. The Commission returned the petition, in a letter dated April 8, 1998, citing a failure to comply with §73.207 of the rules toward two FM stations and the public interest benefits. This instant request has been updated to include some additional information which should be sufficient to allow the Commission to give due consideration to the Noordyk proposal.

BACKGROUND

3. Channel 261A was allotted to Fremont, Michigan, prior to October 1989 and is, therefore, considered a grandfathered 3.0 kilowatt Class A facility under the Commission's rules. At its licensed site, WSHN-FM does not meet the Commission's minimum distance separation

requirements, §73.207 of the rules, due to the change in spacing requirements for 6.0 kilowatt Class A stations implemented in MM Docket #88-375, toward stations WZTU, Channel 261A, Bear Lake, Michigan, and WBCH-FM, Channel 261A, Hastings, Michigan. WSHN-FM, WZTU and WBCH-FM are each operating with equivalent to or less than 3.0 kilowatt/100 meter facilities. WSHN-FM does, however, meet the requirements of §73.213(c) of the rules (former §73.207 rules) toward both stations.¹ To all other facilities, WSHN-FM complies with the present §73.207 spacing requirements.

DISCUSSION

4. Noordyk is proposing to re-allot Channel 261A from Fremont to Holton, specifying the same coordinates as the presently licensed WSHN-FM facility as the reference site for the proposed Holton allocation. As such, Channel 261A spacing will remain unchanged toward WZTU and WBCH-FM, and will comply with §73.207 spacing requirements to all other facilities.²

5. The community of Holton is located within Holton Township in Muskegon County, Michigan. While the community of Holton is not specifically listed in the United States Census, it does have clearly definable boundaries within the township. Holton also has the necessary identia to be categorized as a community for allocation purposes. Attached as Exhibit #1 is a Holton Township Official Zoning Map which defines seven types of areas contained within the township, including commercial, residential, forest recreational and agricultural. A large portion of Holton

1) §73.213(c) requires grandfathered co-channel Class A stations to be a minimum of 105 kilometers apart.

2) In MM Docket #90-164, WYKS-FM, Gainesville, Florida, was permitted to effectuate a same class upgrade by changing channels from 287A to 288A, both channels having a shortspace pursuant to §73.207 of the rules, while not changing transmitter sites, so long as it maintained the same spacing protections to its then current grandfathered shortspaced adjacent stations. Noordyk proposes a similar scenario. *See, 7FCC Rcd. 7657: MM Docket No. 90-164 (St. Augustine, St. Augustine Beach and Gainesville, Florida), "Memorandum Opinion and Order." DA 92-1493, released November 24, 1992.*

Township is within the boundaries of the Manistee National Forest. Based on the zoning map, a definable boundary for the community of Holton was established. This boundary was then used to verify the requisite city grade coverage for the change in community request. The boundaries are composed of the commercial and high density residential areas (inclusive of areas of one acre zoning for residential use).

6. The removal of Channel 261A from Fremont will not deprive the community of its only local service, since co-owned station WSHN, 1550 kHz, will remain licensed to Fremont. In addition, WSHN-FM will still provide 1.0 mV/m service to Fremont. Neither Holton nor Fremont is located within or near an urbanized area as identified by the United States Census.

REQUEST

7. Channel 261A can be allotted to Holton with a site restriction of 12.6 kilometers northeast of the community at the present WSHN-FM transmitter site at geographic coordinates North Latitude 43° 28' 15" and West Longitude 85° 56' 25".³ As shown on Exhibit #2, Channel 261A meets the Commission's spacing requirements in §73.213(c) of the rules toward WZTU and WBCH-FM and §73.207 toward all other existing, applied for or proposed facilities. Exhibit #3 shows that, from the reference site, Channel 261A operating as a maximum 3.0 kilowatt/100 meter facility would place a 3.16 mV/m contour over 100% of the community of Holton.⁴

3) It would be possible to allocate the channel without the imposition of a site restriction and increase the spacing (reducing the shortspace) between Channel 261A at Holton/Fremont and stations WZTU and WBCH-FM. However, the present licensed site coordinates of the existing tower were used.

4) In order to operate with maximum Class A 3.0 kilowatt facilities, Noordyk will be submitting a minor modification application to increase the height of the WSHN-FM antenna's center of radiation. Such an application will be necessary to place the requisite city grade contour over the new community of license. As such, there will be a modest increase in areas and population served by WSHN-FM. Such an application will maintain the current grandfathered shortspacing toward WBCH-FM, Hastings, Michigan, and WZTU-FM, Bear Lake, Michigan.

8. Therefore, Noordyk requests the following amendment to §73.202(b) of the rules:

Holton, Michigan

<u>Present</u>	<u>Proposed</u>
None	261A

Fremont, Michigan

<u>Present</u>	<u>Proposed</u>
261A	None ⁵

PUBLIC INTEREST

9. A maximum 3.0 kilowatt Class A facility operating at Holton (from the reference site) will provide 1.0 mV/m service to 43,146 persons in 1,828.7 square kilometers.⁶ The re-allotment of the channel to Holton will not deprive Fremont of its only service and will provide the first local service to Holton. Once Channel 261A is allocated to Holton, Noordyk will file, on a timely basis, an application to make minor changes in the facilities of WSHN-FM to specify Holton, Michigan, as its community of license.

10. The foregoing Technical Statement was prepared on behalf of Noordyk Broadcasting, Inc., by Graham Brock, Inc., its Technical Consultant. All information relating to the FM allocations and facilities was extracted from the NTIA database as updated on April 10, 1998. We assume no liability for errors or omissions in that database which may be adverse to the requests contained herein.

5) AM station WSHN will remain licensed to Fremont.

6) As presently authorized, WSHN-FM provides 1.0 mV/m service to 40,218 persons in 1,590.7 square kilometers. Population data was extracted from the PL94-171 computer files. This improvement is based on an improvement to 3.0 kilowatts at 100 meters.

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

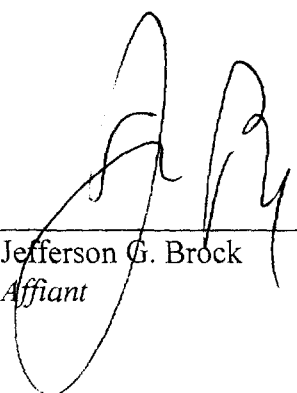
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Noordyk Broadcasting, Inc., licensee of Radio Station WSHN-FM, to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

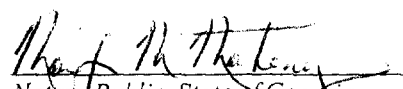
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 17th day of April, 1998.

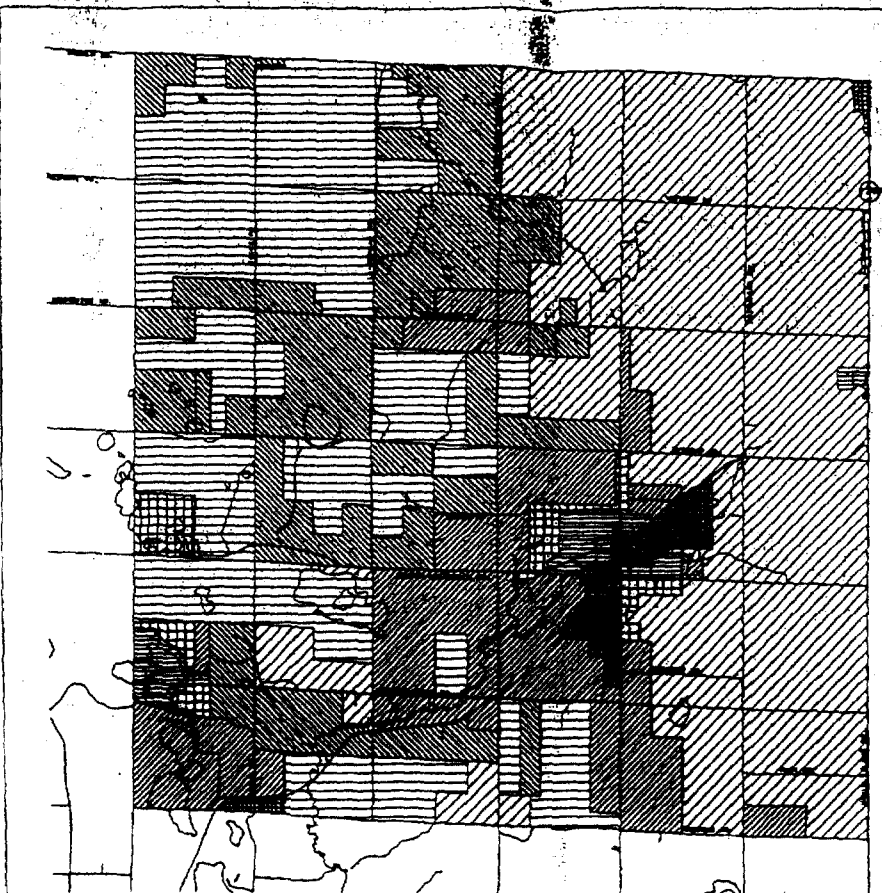


Jefferson G. Brock
Affiant

Sworn to and subscribed before me
this the 17th day of April, 1998



Notary Public, State of Georgia
My Commission Expires: September 12, 1999



HOLTON TOWNSHIP

OFFICIAL ZONING MAP

Legend

- AGRICULTURAL
- COMMERCIAL
- FOREST/REC
- R1
- R2
- R3
- R4

FILE: TONZO\HOLTONZ4

Date: 1-10-1995

PRODUCED BY WMSRDC

HOLTON TOWNSHIP ZONING MAP

EXHIBIT #1
 PETITION FOR RULE MAKING
 NOORDYK BROADCASTING, INC.
 RE-ALLOT CHANNEL 261A
 HOLTON, MICHIGAN

April 1998

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

ALLOCATION STUDY FOR HOLTON, MICHIGAN
USING PRESENT WSHN-FM SITE AS REFERENCE

REFERENCE		DISPLAY DATES
43 28 15 N	CLASS A	DATA 04-17-98
85 56 25 W	Current rules spacings	SEARCH 04-17-98
----- CHANNEL 261 -100.1 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD261	261A	Holton	MI	0.0	0.00	105.0	-105.00
AD	43 28 15	85 56 25	0.000 kW	OM	0.0	65.2	
Noordyk Broadcasting, Inc.							
>change in community of license							
WSHNFM	261A	Fremont	MI	0.0	0.00	105.0	-105.00
LI CN	43 28 15	85 56 25	2.750 kW	90M	0.0	65.2	
Noordyk Broadcasting, Inc. BLH-801209AE							
* WZTU	261A	Bear Lake	MI	352.3	106.64	105.0	1.64
LI CN	44 25 18	86 07 17	3.000 kW	100M	66.3	65.2	
Roger Lewis Hoppe II BLH-871116KA							
>to Channel 264C2 Per One-Step application 951018IF							
* WBCHFM	261A	Hastings	MI	149.9	108.22	105.0	3.55
LI CN	42 37 36	85 16 39	3.000 kW	88M	67.3	65.2	
Barry Broadcasting Company BLH-810324AE							
WUGN	259C	Midland	MI	87.0	112.81	95.0	17.81
LI CN	43 30 56	84 32 49	100.000 kW	304M	70.1	59.0	
Family Life Broadcasting System BLH-950802KB							
WQFN	263A	Walker	MI	162.1	53.04	31.0	22.04
LI CN	43 00 59	85 44 24	3.500 kW	92M	33.0	19.3	
William E. Kuiper, Jr. BLH-930716KZ							
WGRYFM	262C1	Grayling	MI	38.8	157.95	133.0	24.95
LI ZCN	44 34 15	84 41 33	60.000 kW	131M	98.2	82.7	
Gannon Broadcasting Systems BLH-950714KB							
WHFBFM	260B	Benton Harbor	MI	195.2	162.93	113.0	49.93
LI CN	42 03 17	86 27 31	50.000 kW	147M	101.3	70.2	
WHFB B/C Associates Ltd. Part BLH-900118KB							

CHANNEL 261A SPACING STUDY

* NOTE : THE SPACING TOWARDS WZTU AND WBCH-FM ARE BASED ON SECTION 73.213 (c) OF THE RULES. SEE TECHNICAL STATEMENT FOR DETAILS.

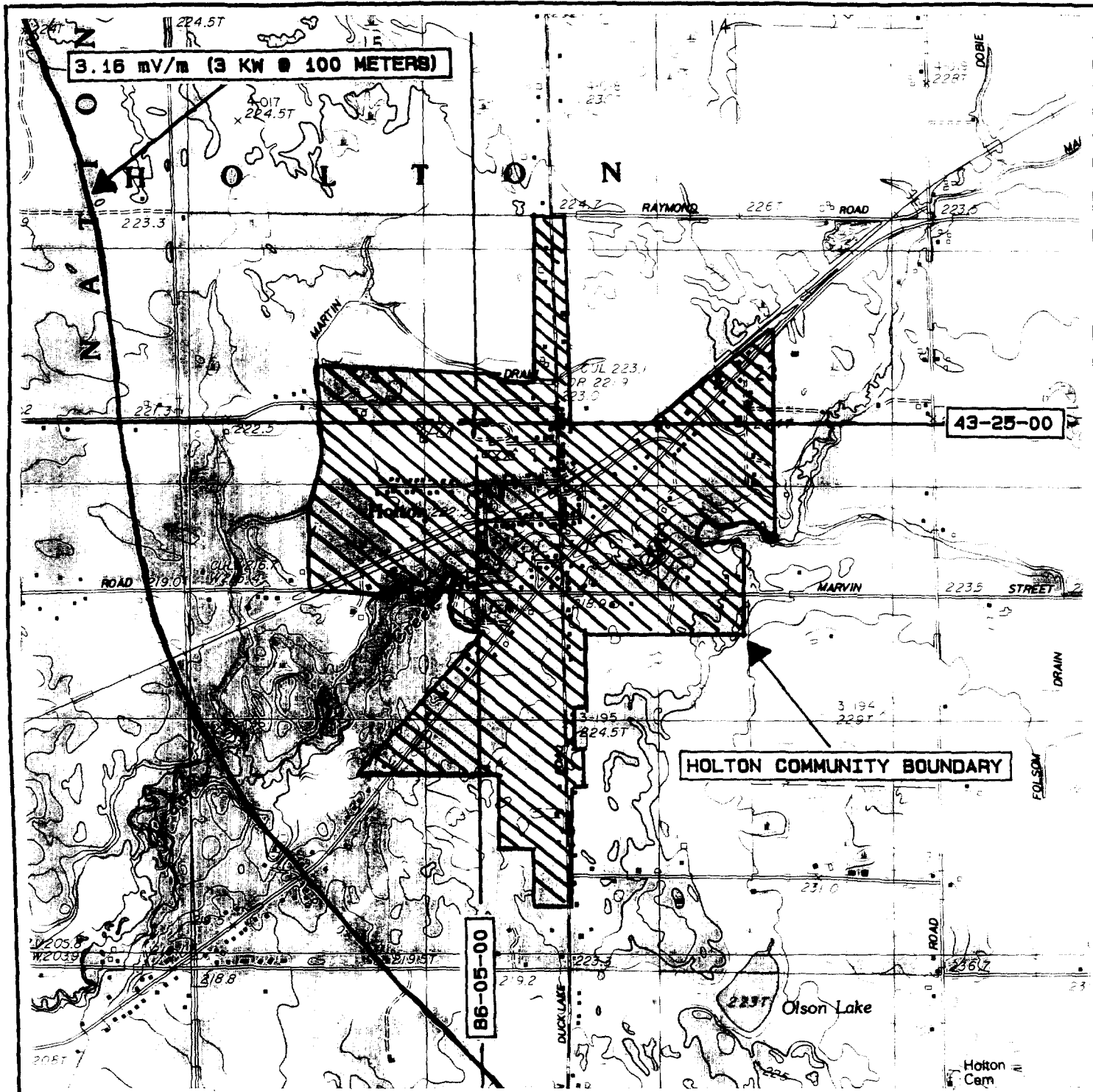
EXHIBIT #2

PETITION FOR RULE MAKING
NOORDYK BROADCASTING, INC.
RE-ALLOT CHANNEL 261A
HOLTON, MICHIGAN

April 1998

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS



CITY GRADE COVERAGE DETAIL

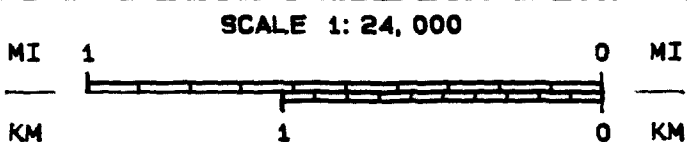
MAP IS A PORTION OF THE 1: 24, 000 SCALE
U.S.G.S. HOLTON TOPOGRAPHIC MAP.

BOUNDARY OF HOLTON FROM HOLTON TOWNSHIP
ZONING MAP.

EXHIBIT #3

PETITION FOR RULE MAKING
NOORDYK BROADCASTING, INC.
RE-ALLOT CHANNEL 261A
HOLTON, MICHIGAN

Apr 11 1998



GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 21st day of April, 1998, I have served a copy of the foregoing "**Petition for Rule Making**" first-class, postage-prepaid, on the following:

*John A. Karousos
Chief, Allocations Branch
Federal Communications Commission
2000 M Street, N.W.; Room 544
Washington, D.C. 20554

A handwritten signature in black ink, appearing to read 'Cary S. Tepper', is written over a horizontal line.

Cary S. Tepper, Esq.

*/ indicates delivery by hand